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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/265,788	03/10/1999	ROBERT ZHONG LU	08291/482001	4926

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NEW YORK, NY 10111

EXAMINER

GARRETT, DAWN L

ART UNIT	PAPER NUMBER
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1774

DATE MAILED: 08/27/2003

32

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/265,788

Applicant(s)

LU ET AL.

Examiner

Dawn Garrett

Art Unit

1774

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-9,11,14,15,17 and 18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4-9,11,14,15,17 and 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 7, 2003 has been entered.

Response to Amendment

2. This Office action is in response to the request for reconsideration dated July 7, 2003. Applicant requested the previous amendment be entered, paper no. 27 (mailed April 3, 2003). Claims 1-3, 10, 12, 13, and 16 have been indicated as cancelled. Claims 4-7, 14, 15, 17, and 18 were amended.

3. The rejection of claims 4-9, 11, 14, and 17 under 35 USC 112, second paragraph, set forth in paper no. 25 (mailed December 17, 2002), paragraph 7, is withdrawn due to the amendment changing the dependencies of the claims to depend from pending claims.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4-9, 11, 14, 15, 17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richter (US 5,728,667). Richter teaches germicidal light-duty dishwashing detergent composition in either a gel, liquid, or semi-liquid form, which comprises 0.5 - 2.75 parts quaternary ammonium germicidal compound (per instant claims 1, 2, 7, and 8), 10-40 parts by weight of a nonionic surfactant (per instant claims 1, 3- 5 and 9-11), 0.01 - 30 parts by weight of a suds boosting agent, and water. (see abstract). Nonionic surfactants which may be used include block copolymers (see col. 8, line 4), primary aliphatic alcohol ethoxylates (see col. 8, line 14), alkylmonoglycosides and alkylpolyglycosides (see col. 9, lines 54-67 and col. 10, lines 1-51). Glucopon 625 is taught as an example alkylpolyglycoside (see col. 10, lines 59-60). Also included in the composition may be detergency builder components per instant claim 7 (see col. 13, lines 53-65). Further optional components may include one or more surface active agents, chelating agents, sequestrants, coloring agents, solvents including alcohols, pH modifying agents, fragrances, fillers, and optical brighteners (see col. 12, line 61-col. 13, line 8) per instant claims 7, 15, 17, and 18. The Richter compositions include water added to the balance of constituents present so to provide 100% by weight of the concentrate composition (see col. 12, lines 49-53) per instant claims 7, 15, 17, and 18. Most preferably, the Richter composition is diluted in the range of 1:100 - 1:10,000 for use, but "the actual dilution selected is in part determinable by the degree and amount of dirt and grime to be removed from the surfaces and articles being cleaned, the amount of mechanical force..." (see col. 15, lines 41-58) per instant claim 6. The Richter composition are taught to be applied to hard surfaces (see col. 1, lines 15-19)

Art Unit: 1774

per instant claim 14. Richter fails to teach a polymeric cationic surfactant based on a polyquaternary ammonium salt, however, as presently written, instant claims 7, 15, 17, and 18 recite this ingredient as optional. Accordingly, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to have selected components for compositions and practiced methods as recited in instant claims 4-9, 11, 14, 15, 17, and 18, because all limitations of these claims are generally taught by Richter.

Response to Arguments

6. Applicant's arguments filed April 3, 2003 have been fully considered but they are not persuasive. In the most recent amendment, paper no. 27, applicant amended all of the claims so that the word "irritancy" was limited to "ocular irritation". The examiner submits this amendment has not distinguished the claims over the prior art, Richter. The examiner maintains Richter teaches a cleaning composition that reads upon the instant compositions. The degree of ocular irritation of a composition is considered to be a property of the composition. Applicant has recited reduced ocular irritation, but does not claim specific ocular irritation parameters or to what other compositions the instant compositions are compared. Applicant is reminded recitation of a newly disclosed property does not distinguish over a reference disclosure of the article or composition claims. *General Electric v. Jewe Incandescent Lamp Co.*, 67 USPQ 155. *Titanium Metal Corp. v. Banner*, 227 USPQ 773. Applicant bears responsibility for proving that reference composition does not possess the characteristics recited in the claims. *In re Fritzgerald*, 205 USPQ 597, *In re Best*, 195 USPQ 430. Applicant further

Art Unit: 1774

argues "It is well known that compositions containing germicidal quaternary ammonium compounds have a potential for irritation, in particular ocular irritation." The examiner submits that both the prior art and applicant recite quaternary ammonium. Applicant admits the compounds have a "potential" for irritation, but do not necessarily cause irritation. Applicant has not produced clear evidence that compositions commensurate in scope with the Richter compositions cause ocular irritation. Applicant also argues "A hand soap is not a product intended for contact with eyes". The examiner submits that the instant compositions are not intended for direct contact with eyes either, because the specification states the compositions are used for hard surface cleaning. Applicant continues to argue alkyl polyglycosides are irritants as discussed in the provides material safety data sheet; however, this is a component of applicant's composition. The examiner maintains clear showing of unexpected results has not been shown in comparison with the closest art. Applicant further argues "the Richter reference is not concerned with mitigation of irritancy". Again, the examiner submits applicant bears responsibility for proving that reference composition does not possess the irritation characteristics recited in the claims.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The examiner has listed the Like and Hall references previously submitted by applicant on the attached PTO-892.

Art Unit: 1774

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dawn Garrett whose telephone number is (703)305-0788. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cynthia Kelly can be reached on (703)-308-0449. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2351.

Dawn Garrett
Dawn Garrett
Examiner
Art Unit 1774

D.G.
August 21, 2003

CYNTHIA H. KELLY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700

Cynthia H. Kelly